IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No: 756 of 2007

Date of decision: 6.8.2007

Prabandh Samiti Sarswati Vidya Mandir ..Petitioner

Versus

H.P.Board of School Education and anr. ..Respondents

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1]

Mr. R.S.Kanwar, counsel for the petitioner.

Mr.Lovneesh Kanwar, counsel for the respondents.

Per Deepak Gupta, J. (Oral)

The petitioner in the present petition has prayed for amongst others the following reliefs:-

(i) That the present writ petition may kindly be allowed and the impugned Annexures P-5 and P-7 dated 12.3.2007 and 30.3.2007 respectively whereby the documents vide which the petitioner has removed the objection raised by the respondent Board followed by the rejection of the application of

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

the petitioner for renewal of affiliation for the academic session 2007-08 may kindly be quashed and set aside and the said action on the part of the respondents be also declared as unconstitutional and ultra-vires to the provision of the Constitution of India.

(ii) The respondent Board may further be directed to consider the application of the petitioner submitted for the affiliation well within time and further to re-consider the said application for affiliation for the session 2007-08 in pursuance to the H.P. Board of School Education regulation 1992 on merit."

It would be pertinent to mention that one of us (Deepak Gupta, J.) had disposed of CWP No. 92 of 2006 on 25.5.2006 and in the said judgment had given certain directions to the H.P.Board of School Education. The direction which is relevant for the decision of the aforesaid cases is as follows:-

"That for the academic session 2007-2008 commencing in April, 2007 and thereafter all applications for affiliation by schools should be invited by the Board by issuing advertisements in the month of November of the year previous to the academic year for which affiliation is sought in leading newspapers being widely circulated in Himachal Pradesh (three English and three Hindi) requiring that the applications for affiliation should be submitted to the Board by 31st December of the year prior to the year for which affiliation is sought that is to

say that for the academic year 2007-2008 the applications for affiliation should be submitted to the Board by 31st December, 2006 and no application for affiliation should be entertained thereafter under any circumstances."

In compliance to the aforesaid judgment, the respondent Board amended these regulations and the relevant amended regulation is as follows:

"16.4.1. Application for affiliation by schools shall be invited by the Board by issuing advertisements in the month of November of the year previous to the academic year for which affiliation is sought in leading news papers being widely circulated in Himachal Pradesh (three English & three Hindi) requiring that the application for affiliation should be submitted to the Board by 31st December of the session prior to the year for which affiliation is sought and no application for affiliation shall be entertained thereafter. However, the Chairman shall have the power to decide any delay cases on merits."

A number of schools did not apply for affiliation for the academic session 2007-2008 on or before 31st December, 2006. A large number of writ petitions were filed which were disposed of by us with the following observations :-

"Keeping in view the fact that career of students is involved and the petitioner educational

institutions are being run for some length of time, we allow the aforesaid writ petitions and direct that the applications submitted by the petitioners therein pursuant to the interim orders passed by this court shall be considered by the Board in accordance with law. In case these schools comply with all the parameters, they shall be granted affiliation and affiliation shall not be rejected only on the ground that their applications were received late. This is, however, subject to the condition that all these petitioners shall pay Rs.2,000/- each as costs to the respondent Board by bank draft only on or before 31st March, 2007. In those cases in which no interim orders have been passed, the petitioners shall submit their applications on or before 31st March, 2007. These applications shall be submitted by hand to the Board.

The second class of cases is of those persons who have applied to the Board after 2nd January and before 31st January, 2006. These are the petitioners in CWP Nos. 169, 219, 220, 221, 234, 266, 267, 263, 296, 298, 299, 300, 325, 320, 323 and 118 of 2007. For the reasons given above and keeping in view the fact that we propose by order of the court to extend the period for filing the applications for grant of affiliation for the academic year 2007-2008 till 31st March, 2007, we allow these writ petitions also. However, the petitioners in these cases shall pay costs of Rs. 5,000/- each.

The last category of cases relate to those persons who have applied in February, 2007, i.e.

petitioners in CWP Nos. 215, 248, 265 and 292 of 2007 or have not applied till filing of the petitions, such as the petitioners in CWP Nos. 183, 297 and 321 of 2007. They shall also be governed by the same order, but subject to the condition that they shall pay costs of Rs. 10,000/- each.

Keeping in view the fact that we have permitted the petitioners to file their applications on or before 31st March, 2007, we feel that it would be inequitable to not grant similar benefit to those institutions/schools which have not approached this court till date. We therefore, direct that if any other school or society which has not even filed any writ petition(s) applies to the Board on or before 31st March, 2007, their applications shall be entertained subject to payment of Rs.20,000/- as late fees."

Admittedly the petitioner applied for affiliation before the cut off date of 31st December, 2006. The Board raised certain objections vide its communication dated 7.2.2007 and according to the petitioner this communication was received by it on 20.2.2007. The petitioner submits that it ensured that the deficiencies pointed out by the Board have been removed and re-submitted its application for grant of affiliation vide registered letter on 24.2.2007. This letter was received by the Board on 1.3.2007. On 12.3.2007 the respondent-

Board returned the application of the petitioner on the ground that it had been received after cut off date of 28.2.2007. According to the petitioner thereafter this court passed judgment on 14.3.2007 in CWP No. 103 of 2007 and other connected matters. According to the petitioner thereafter he made a representation to the respondent-Board, but no response was received.

We have in a large number of cases, keeping in view the interest of the students, teachers and other staff and also keeping in view the fact that this is the first year that the cut off dates have been notified, extended the period from time to time. In the present case the petitioner-school had applied for affiliation well within time. It had also submitted its application after allegedly removing the objection(s) on the last date. However, there is no explanation as to why the petitioner kept silent from 21st April, 2007 till the present petition was filed on 28th May, 2007.

Keeping in view the aforesaid facts we allow this writ petition and direct that the present petitioner may file its application for grant of affiliation to the Board on or before 13th August, 2007 subject to the petitioner depositing alongwith the application a sum of Rs.10,000/-

as late fees. This late fees is being imposed because of the gross negligence and total inaction on the part of the administrators of the school, especially after 21st April, 2007. This amount shall be deposited alongwith the application for grant of affiliation by way of demand draft drawn in favour of the H.P.Board of School Eduation, payable at Dharamsala. We make it absolutely clear that this amount shall not be recovered from the students in any form, whether by enhancement of tuition fee or charging any fund by any name whatsoever. This amount shall be paid by the school/society and not taken into consideration while fixing the fees.

The Board shall utilize this late fees in accordance with the directions issued by us in the judgment rendered in CWP No. 103 of 2007, dated 14.3.2007.

In view of the fact that we have extended the time for filing the application till 13th August, 2007, the Board may re-inspect the petitioner and complete the procedural formalities of inspection and grant of affiliation by 31st August, 2007.

The writ petition is disposed of in the aforesaid terms. All the pending applications in this writ petition are also disposed of.

Copy dasti.

(Deepak Gupta), J.

August 6, 2007(K) (V. K. Ahuja),J.